

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Consumer Information and Disclosure)	CG Docket No. 09-158
)	
Truth-in-Billing and Billing Format)	CC Docket No. 98-170
)	
IP-Enabled Services)	WC Docket No. 04-36

**COMMENTS OF THE MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

I. Introduction

The Massachusetts Department of Telecommunications and Cable (“MDTC”)¹ submits these comments pursuant to the Notice of Inquiry (“NOI”), released by the Federal Communications Commission (“FCC”) on August 28, 2009, in the above referenced dockets.² The FCC initiated the NOI “to examine whether there are opportunities to protect and empower consumers by ensuring sufficient access to relevant information about communication services” including wireline and wireless voice services, as well as broadband, subscription video (cable and satellite), and bundled services.³ More specifically, the FCC has requested comment on how to provide consumers with better access to clear, easily understandable information they need to:

¹ The MDTC is the exclusive state regulator of telecommunications and cable services within the Commonwealth of Massachusetts. Mass. Gen. Laws c. 25C §1.

² *In the Matter of Consumer Information and Disclosure* (CG Docket No. 09-158), *Truth-in-Billing and Billing Format* (CC Docket No. 98-170), *IP-Enabled Services* (WC Docket No. 04-36), Notice of Inquiry, FCC 09-68 (rel. Aug. 28, 2009) (“NOI”).

³ *Id.* at ¶ 16.

(a) choose a provider, (b) choose a service plan, (c) manage use of the service plan, and (d) decide whether and when to switch an existing provider or plan.⁴ The FCC emphasizes that it is seeking as much concrete data as possible on the questions posed in its NOI.⁵

The MDTC asserts that consumer protection and information disclosure rules are necessary for consumers lacking sufficient competition in the communications marketplace. In addition, as the FCC seems to allude to by the questions posed in this NOI, the MDTC submits that even for consumers with multiple communications service alternatives, market forces alone are insufficient to adequately protect consumers in the communications marketplace, and such rules also are needed even for those consumers in areas with multiple communications service alternatives. As discussed below, complaint trends indicate that consumers remain confused by service options and applicable rates and fees; continue to complain about billing practices and unauthorized charges; and continue to complain about quality of service and customer service practices. The MDTC urges the FCC to expand the existing federal Truth-in-Billing rules⁶ for wireline and wireless providers to include additional consumer information disclosure rules and to adopt similar consumer protection and disclosure rules for providers of broadband, VoIP (i.e., Voice over Internet Protocol), subscription video (cable and satellite), and bundled services.

⁴ *Id.*

⁵ *Id.*

⁶ *See Truth-in-Billing and Billing Format*, CC Docket No. 98-170, First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-72 (1999) (“*First Truth-in-Billing Order*”); *Truth-in-Billing Format; National Association of State Utility Consumer Advocates’ Petition for Declaratory Ruling Regarding Truth-in-Billing*, CC Docket No. 98-170, CG Docket No. 04-208, Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, FCC 05-55 (2005) (“*Second Truth-in-Billing Order and FNPRM*”). The Truth-in-Billing rules require that customer bills: (1) be clearly organized, clearly identify the service provider, and highlight any new providers; (2) contain full and non-misleading descriptions of charges that appear therein; and (3) contain clear and conspicuous disclosure of any information the consumer may need to make inquiries about, or to contest charges on the bill. *First Truth-in-Billing Order*, at ¶ 5; *see also* 47 C.F.R. § 64.2401. In the *Second Truth-in-Billing Order and FNPRM*, the FCC, noting that consumers were still experiencing confusion about their bills, proposed additional methods to provide consumers with clear information on their bills. *See generally Second Truth-in-Billing Order and FNPRM*. However, these proposals have not been acted upon. NOI at ¶ 10.

Finally, the MDTC urges the FCC to permit states to enforce federally mandated consumer protection requirements; and also to supplement federal regulatory requirements, if and when the need arises and to the extent such state standards are not inconsistent with federal requirements.⁷

II. The State of Competition in Massachusetts

To the extent the Commission or any Commissioners remain unconvinced of the need for consumer protections, including information disclosure rules, because of the false premise that communications markets are fully competitive, the MDTC provides the following snap shot of residential competition in the voice and video markets – the two industries over which the MDTC has authority -- in Massachusetts. There has been substantial convergence of voice and video services in Massachusetts, like the country as a whole, over the previous five years as some providers have upgraded their networks to offer broadband and/or video services.⁸ As a result, many consumers in densely populated areas of Massachusetts may choose from at least two providers of voice and video services.⁹ In less populated areas of the state and for some segments of the market (e.g., moderate to lower income consumers), competitive alternatives do not exist to the same degree or have declined.¹⁰ Moreover, because of changing industry

⁷ These comments are based on the MDTC's views at this point in time, and those viewpoints may change based on subsequent information provided either in proceedings before the MDTC or the FCC. These comments are directed toward the issues raised in the NOI, and the MDTC's silence on particular issues raised in the NOI should not be construed as support for those issues.

⁸ See, e.g., *Voice, Video and Broadband: The Changing Competitive Landscape and its Impact on Consumers*, United States Department of Justice (Nov. 2008), available at <http://www.usdoj.gov/atr/public/reports/239284.pdf> (last viewed Oct. 8, 2009).

⁹ This summary of the state of competition in Massachusetts is based primarily on data for the time period 2005 - 2007, unless otherwise specified. The data was compiled for a Massachusetts Competition Status Report, ("Report") that will be released shortly. Once the MDTC's Report is released, the MDTC will submit it as part of the record in this proceeding. The data in the Report was derived from multiple sources, including FCC reports. In these Comments, the MDTC cites to the underlying source of the data, rather than to the Report. This data is attached as Appendix A to the instant comments.

¹⁰ As in explained on page 6, wireless voice service is not considered a substitute for wireline voice service and is discussed separately.

conditions, the communications markets in Massachusetts have become more concentrated and dominated by a handful of large providers.

The residential wireline voice services market in Massachusetts is essentially a two-provider market: Verizon, the near-ubiquitous incumbent local exchange carrier (“ILEC”),¹¹ and cable voice providers. In its semi-annual Local Telephone Competition Report, the FCC reports a total of 3.5 million access lines provided by wireline carriers in Massachusetts as of December 2007, with 1.85 million of these lines provided to residential consumers.¹² Furthermore, the FCC reported that ILECs provide 76% of the access lines (business and residential) in the state, with the remaining 24% split among 43 Competitive Local Exchange Carriers (“CLECs”).¹³ However, until recently, these reports did not accurately consider voice services provided via fixed VoIP, which is predominately offered by cable operators.¹⁴ These reports also do not segment the CLEC providers by platform type when reporting state data. The MDTC asserts that for the residential market, cable voice providers should be considered separately from CLEC providers due to their different characteristics (i.e., cable voice providers use their own network) and their increasing predominant role.

When adjusting the number of residential access lines to include fixed VoIP lines provided by cable carriers, as of 2007, carriers provide 2.35 million residential access lines in the

¹¹ Four other ILECs operate in Massachusetts, serving all or part of four rural communities and accounting for 0.1% of access lines. *See* Appendix A at Table 1 and Figure 2, attached.

¹² *See* FCC Wireline Competition Bureau, “*Local Telephone Competition: Status as of December 31, 2007*,” at Tables 7 and 12 (rel. September 2008) (“*December 2007 Local Competition Report*”).

¹³ *Id.* at Tables 7 and 13.

¹⁴ *See December 2007 Local Competition Report* at 3; *In the Matter of Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Service to All Americans, Improvement of Wireless Broadband Subscriberhip Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscriberhip*, WC Docket No. 07-38, Report and Order and Further Notice of Proposed Rulemaking, FCC 08-89, at ¶ 3 (rel. June 12, 2008).

state.¹⁵ Of these lines, Verizon and the other four very small ILECs provide 1.6 million lines (69.4%), cable carriers provide 654,200 lines (27.8%), and CLECs provide 63,800 lines (2.7%).¹⁶ The number of available competitive providers for wireline voice services has decreased dramatically for residential customers in Massachusetts. In particular, since 2005, relatively few CLECs actively market services to residential customers, with a market share declining from 8% in June 2005 to 2.7% by December 2007.¹⁷ Over the same period, cable providers have gained market share, from 13.1% to 27.9 %, and competition between ILECs and cable companies is stronger in certain areas of Massachusetts.¹⁸ However, regional distinctions persist, and rural customers that live in the 50 communities in Massachusetts that lack any cable voice provider have no competitive options for wireline voice service.¹⁹ Furthermore, for most of the 301 communities with a cable voice alternative, there is only one operator providing this alternative to the ILEC service (here, Verizon).²⁰ Verizon has been upgrading its network and has introduced a cable video alternative in approximately 100 communities in Massachusetts through its FiOS product offering.²¹ However, this build-out has not provided consumers with a new voice alternative because Verizon is already entrenched in these communities as the ILEC. As of 2008, the MDTC estimates that 97.1% of the households in Massachusetts²² could access service from at least one cable voice operator, while approximately 20.8% (508,000) of all

¹⁵ See Appendix A at Figure 6, attached.

¹⁶ *Id.*

¹⁷ *Id.* at Figures 3-6.

¹⁸ *Id.* at Figures 3-7.

¹⁹ *Id.* at Figures 10 and 11.

²⁰ *Id.* at Figures 2, 10, and 11.

²¹ *Id.* State law and regulations in Massachusetts require cable operators to apply for franchises at the municipal level. See Mass. Gen. Laws c. 166A, §§ 3-5; 207 C.M.R. §§ 3.02-3.04.

²² There are an estimated 2.44 million occupied housing units in Massachusetts. U.S. Census Bureau, *Census 2000*, available at <http://censtats.census.gov/data/MA/04025.pdf> (last viewed Oct. 13, 2009).

households may access cable voice services from two cable operators.²³ All of these latter households are located in 19 communities within a 25 mile radius of Boston and are served by either RCN or a municipal cable provider in addition to the incumbent cable provider.²⁴ Therefore, the MDTC views the residential wireline market as essentially a two-provider market (ILEC and one cable provider) for 1.97 million (80%) of Massachusetts households.²⁵

Regarding wireless voice service, most consumers statewide have access to service from at least one wireless carrier.²⁶ However, zero coverage areas are prevalent across Western Massachusetts in the Berkshire and Pioneer Valley regions.²⁷ By contrast, much of the Boston metropolitan region is covered by at least three wireless voice carriers.²⁸ Wireless phones are primarily used as a complement to wireline voice services, but a growing number of consumers, particularly younger consumers and those in densely populated areas, are going all-wireless.²⁹ As of December 2007, approximately 10% of Massachusetts consumers had “cut the cord.”³⁰ Accordingly, wireless voice service is not currently considered a true substitute to wireline voice service from a regulatory or economic standpoint.³¹

²³ See Appendix A at Table 2, attached.

²⁴ *Id.* at Figure 11.

²⁵ *Id.* at Figures 2-6, 10 and 11, and Table 2. In comparison, 70,000 households (2.9%) have access only to the ILEC, while 400,000 households (16%) have access to three providers (the ILEC and two providers).

²⁶ See Appendix A at Figure 8, attached.

²⁷ *Id.*

²⁸ *Id.*

²⁹ See Centers for Disease Control and Prevention, *Wireless Substitution: Early Release of Estimates Based on Data from the National Health Interview Survey, July - Dec. 2006* (rel. May 14, 2007), available at <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless200705.pdf> (last viewed Oct. 8, 2009).

³⁰ See Appendix A at Figure 9, attached. As such, wireless voice offerings are typically premium-based services, giving consumers a range of options and ancillary functions.

³¹ See *Voice, Video and Broadband: The Changing Competitive Landscape and its Impact on Consumers*, United States Department of Justice (Nov. 2008), available at <http://www.usdoj.gov/atr/public/reports/239284.pdf> (last viewed Oct. 8, 2009).

Regarding cable service, Massachusetts consumers are experiencing increasing competition in this market. For instance, the number of Massachusetts communities with two cable providers has increased during the last several years.³² However, a large number of communities are still served by a single incumbent (i.e., first to operate) cable provider or a satellite service provider.³³ Additionally, 43 communities do not have cable service.³⁴ Consumers in these communities, as well as consumers in those less dense parts of communities where the video provider(s) has not built-out, are unlikely to have cable service unless providers are required to serve these communities or portions thereof.³⁵

In short, the MDTC asserts that there are competitive alternatives for communication services for many consumers in densely populated areas of Massachusetts. However, in some areas of Massachusetts, consumers have limited or no competitive choices. Certainly, for consumers who will not benefit from competitive market forces, consumer protection and information disclosure rules must be applied. But, even in areas where competition is healthier, the MDTC contends that market forces alone are insufficient to adequately protect consumers in

³² See Appendix A at Figures 10 and 11, attached; *compare* Verizon Press Release, “Reading, Mass. Board of Selectmen Grants Verizon Authority to Offer FiOS TV to More Than 23,000 Potential Viewers,” (rel. Jan. 26, 2006) (indicating “Reading is the second Massachusetts municipality to grant Verizon a cable franchise,” as of January 2006), available at <http://newscenter.verizon.com/press-releases/verizon/2006/page.jsp?itemID=29672038> (last viewed Oct. 9, 2009), and Verizon, “Verizon FiOS TV: Massachusetts Communities Open for Sales,” (rel. Sept. 2009) (showing almost 100 cable licenses granted to Verizon as of September 2009), available at <http://www22.verizon.com/about/community/ma/> and http://www22.verizon.com/about/community/ma/files/matvtowns_sep09.pdf (last viewed Oct. 9, 2009).

³³ See Appendix A at Figures 10 and 11. The MDTC does not view satellite service as a true substitute for wireline video service because of the line-of-site availability limitation with satellite service.

³⁴ See Appendix A at Figures 10 and 11.

³⁵ See Joint Comments of the Massachusetts Office of the Attorney General and the MDTC, *In the Matter of Petitions of Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas* (WC Docket 06-172), *Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas* (WC Docket No. 07-97), at 20-21 (filed Sept. 21, 2009).

the communication services marketplace. Consumer protection and information disclosure requirements are still appropriate and necessary given the increasingly pervasive and important role communication services play in people's lives. Just as basic consumer protections and standards were deemed essential for telephone service, such requirements should be adopted for other communications services including wireless voice, broadband, VoIP, subscription video (cable and satellite), and bundled services.

III. Complaint Trends in Massachusetts

Complaint trends in Massachusetts also support the MDTC's recommendation to expand the existing federal Truth-in-Billing rules for wireline and wireless providers to include additional consumer information disclosure rules; and to adopt similar consumer protection and disclosure rules for providers of broadband, VoIP, subscription video, and bundled services. As described below, the vast majority of complaints received by the MDTC consistently involve billing issues. This trend reflects that consumers continue to be confused by applicable terms and conditions of service contracts and provider billing practices. Additionally, the MDTC consistently receives a notable number of service quality complaints suggesting in certain instances that consumers may not be fully aware of the capabilities and limitations of services and equipment available to them. This complaint data reflects that consumers should be afforded better access to sufficiently detailed information to make informed decisions when purchasing, contracting for, and terminating communication services.

Between January 1, 2005, and December 31, 2007, the MDTC's predecessor agency, the MDTE, received 7,064 consumer complaints regarding telephone service.³⁶ Of this total, 4,665

³⁶ See Appendix B, attached. The complaint data presented in Appendix B is the most recent MDTC data available in the form requested by the FCC for purposes of this proceeding.

complaints (or 66.04%) concerned billing issues. These billing complaints dealt with a variety of billing issues, including but not limited to, disputed rates, fees, and taxes; unauthorized charges (i.e., cramming); confusing billing formats; continued billing after cancellation or termination; service denials; slamming; and marketing issues. Also, it should be noted that in Massachusetts, consumers must first contact their telephone or cable provider regarding billing disputes before seeking dispute resolution assistance from the MDTC (previously, the MDTE). If the dispute is not resolved with the provider, then the consumer may file a complaint with the MDTC.³⁷ Furthermore, while the number of billing complaints filed with the MDTE dropped during this time period from 1,869 (in 2005), to 1,445 (in 2006), to 1,351 (in 2007), the percentage of billing complaints filed each year (compared to total telephone service complaints) was substantial – 69.27% in 2005; 61.80% in 2006; and 66.62% in 2007.³⁸ Additionally, of the 7,064 consumer complaints regarding telephone service filed during 2005 through 2007, 2,212 (or 31.31%) of those total complaints concerned quality of service issues.³⁹ These service quality complaints include, but are not limited to, complaints concerning the quality of telephone service; poor reception; inability to reach customer service representatives; confusing information provided about service or equipment; installation problems; and uncooperative customer service representatives. Again, although the number of quality of service complaints filed with the MDTE declined overall between 2005 and 2007 (despite a spike in 2006), the consistent percentage of these complaints seems to demonstrate that service quality issues are

³⁷ See *Investigation by the Department, on its own motion, of the policies, practices and services of the New England Telephone & Telegraph Company*, D.P.U. 18448, Final Order establishing Rules and Practices relating to Telephone Service to Residential Customers, Rule 6.1 (December 19, 1977); 207 CMR 10.07.

³⁸ The MDTC also notes that these numbers may understate the true number of customers with complaints, since some cable voice providers using fixed VoIP technology, including Comcast, the largest cable provider in the state, do not list the MDTC's telephone number on their bills, because they claim that they are no longer subject to the MDTC's regulatory authority.

³⁹ See Appendix B, attached.

still a concern to Massachusetts consumers despite the introduction of some competitive forces – 28.50% (or 769 complaints) in 2005; 34.77% (or 813 complaints) in 2006; and 31.07% (or 630 complaints) in 2007.

Unlike the telephone service complaints, the number of cable service complaints filed with the MDTE increased during 2005 through 2007.⁴⁰ The majority of cable service complaints involved billing disputes (e.g., disputed rates, fees, and taxes; unauthorized charges; service denials; and marketing issues, etc.) Of the cable services complaints filed during this time period, 70.97% (or 335 complaints) filed in 2005 concerned billing disputes; 63.92% (or 365 complaints) filed in 2006 concerned billing disputes; and 53.62% (or 614 complaints) filed in 2007 concerned billing disputes. The percentage of cable billing complaints dropped in 2007, primarily because the number of cable quality service complaints (which increased during this period) spiked in 2007. In particular, 124 of the 472 cable complaints filed in 2005 (or 26.27%); 196 of the 571 filed in 2006 (or 34.33%); and 518 of the 1145 filed in 2007 (or 45.24%), respectively, were about quality of service.

Since the MDTC does not regulate wireless voice services at the present time, the MDTC does not track complaint data received by the MDTC involving wireless complaints.⁴¹ The MDTC emphasizes that, currently, federal and Massachusetts law does not require wireless voice service providers to provide billing dispute contact information for the appropriate state utility commission or attorney general's office where the consumer resides. As such, consumers

⁴⁰ *Id.*

⁴¹ See *In the Matter of Federal-State Board on Universal Service, Virgin Mobile USA, L.P., Petition for Limited Designation as an Eligible Telecommunications Carrier in the Commonwealth of Massachusetts*, CC Docket No. 96-45, MDTC Comments, at 5-6 (filed Aug. 21, 2008); see generally, *Investigation by the Department of Public Utilities. upon its own motion on Regulation of Commercial Mobile Radio Services*, D.P.U. 94-72, Order (rel. Aug. 5, 1994). The MDTC is the successor agency of the Massachusetts Department of Public Utilities for matters relating to telecommunications and cable.

arguably do not know where they can seek dispute resolution assistance at the local level.

Accordingly, any available complaint data provided by the MDTC would likely be misleading and not convey the full scope of complaints and problems experienced by wireless voice consumers.

IV. Recommended Consumer Information Disclosures and Protections

As discussed above, the concentration of communication services markets in Massachusetts, changes in the competitive landscape, and recent complaint trends highlight the need to expand the existing federal Truth-in-Billing rules to include consumer information disclosure rules. These expanded rules should be applied to all communication services providers identified in the NOI, namely, wireline and wireless voice, as well as broadband, VoIP, subscription video (cable and satellite⁴²), and bundled services providers.⁴³

A. Identifying Information Consumers Need

Complaints filed by Massachusetts consumers, as described above, suggest that a significant number of consumers continue to be confused by communication service offerings; coverage and capabilities of service and/or equipment; contract terms and conditions; and billing practices. This complaint data reflects that consumers, particularly residential consumers, must have better access to sufficiently detailed information to make informed decisions when purchasing, contracting for, and terminating communication services.

⁴² The MDTC does not regulate satellite service, but in the interest of regulatory parity, the MDTC believes that adopted rules should apply to satellite service as well.

⁴³ With regard to federal wireless consumer protection standards, the MDTC recently provided many of the same recommendations in its response to the National Association of Regulatory Utility Commissioners “Priority Federal Standards Survey” conducted late last year. *See Ad Hoc Committee on National Wireless Consumer Protection Standards*, “Priority Federal Standards Survey” (rel. June 2009), available at <http://www.naruc.org/?p=323> (last viewed Oct. 9, 2009) (“NARUC Priority Federal Standards Survey”).

(i) Choosing a provider and service plan

In order to make an informed decision when selecting a provider and service plan, a consumer must be provided with all material terms and conditions associated with service offerings at all stages of the process. As such, promotional advertising and information provided to consumers prior to entering into a communication services contract must include *at a minimum* the following information: (1) details about the capabilities and limitations of the available services and equipment; (2) length of the service contract; (3) duration of promotional price/rate and applicable price/rate thereafter; (4) *all* applicable rates, fees, and taxes associated with the available services and equipment, including but not limited to activation fees and early termination fees; (5) all other material terms and conditions associated with the service contracts, including but not limited to cancellation or trial periods, usage restrictions, rate changes, and penalty assessments; (6) availability of and qualifications for low-income and any other discount services; (7) 911 availability and/or limitations; (8) and information regarding available customer services, disability accessibility, and dispute resolution procedures. (The recommended formatting and display of this information is discussed below in section B.) Any information disclosure rules implemented by the FCC should prohibit misrepresentations and unfair or deceptive practices consistent with existing federal and state consumer protection statutes.

With regard to wireless service, disclosures provided to consumers in advertising and at the point of sale should also include and identify texting fees; times of peak and off-peak hours; costs for enhanced services; limitations on use and minutes; and amount of additional charges for out-of-network (roaming) calls.⁴⁴ Additionally, advertising claims regarding “National,”

⁴⁴ See “NARUC Priority Federal Standards Survey,” available at <http://www.naruc.org/?p=323>. See also 2004 Wireless Settlements between Attorneys General and Verizon Wireless, Sprint PCS, and Cingular Wireless, available at

“Nationwide,” or “Coast to Coast” coverage should be accompanied by the basis for this claim (e.g., cities and states covered), a referral to and location of applicable coverage map (e.g., provider’s website address), and any material limitations.⁴⁵

Also, regarding bundled services, consumers should be informed in advance of purchase that they are contracting to receive “interconnected fixed VoIP” (where applicable) and that such service may or may not be subject to traditional telephone consumer protections such as termination and billing regulations depending upon the scope of the jurisdiction in the state where the service is being provided.⁴⁶ Consumers should also be clearly informed in advance of purchase that termination of one of the services in the bundled package may trigger higher rates for remaining services and/or result in the application of an early termination fee.

Finally, in addition to mandating that full disclosures be made in advertising and prior to purchase, all material terms and conditions associated with any purchased service must be clearly and conspicuously stated in each contract for communication services. Dispute resolution procedures (with contact information) should be clearly and conspicuously identified. All contracts should be formatted in a readable and understandable manner.

(ii) Managing use of the service plan and switching an existing provider or plan

Massachusetts consumers continue to file complaints regarding billing practices of communication services providers at a significant rate. Some of the consumer confusion over billing practices and associated disputes over billed charges may be reduced by requiring full disclosure of all material terms and conditions of service plans in advance of the consumer

<http://www.nasuca.org/VERIZON%20WIRELESS%20AVC%20FINAL%20VERSION.pdf>;
<http://www.oag.state.tx.us/oagNews/release.php?id=533> (last viewed Oct. 13, 2009).

⁴⁵ *Id.*

⁴⁶ In many states, fixed VoIP providers either assert to the state utility commission that they are not subject to state jurisdiction or have been deregulated by state law.

entering into the service contract. In addition, to the extent not specifically addressed in the existing federal Truth-in-Billing rules, bills should be formatted in a readable and understandable manner. All charges should be clearly identified and itemized. With respect to bundled services, fees and charges associated with each particular service in the bundled package should be clearly identified and itemized. Bills should not contain misrepresentations regarding the reason or basis for the charges (e.g., discretionary cost recovery fees should not be identified as taxes). Government taxes and charges should be separately identified from service charges to the extent possible. A company customer service number and regulatory contact information (e.g., state utility commission or the state attorney general's office) should be included on each bill. Real time usage alerts should be offered to consumers to assist them in monitoring any usage quotas or limits.

B. Formatting and Display of Consumer Information

While the MDTC does not currently have a position as to whether Schumer Box type rules should be applied to advertising, service contracts, bills, or provider websites, the MDTC generally supports the consistent or standardized disclosure of information to the extent needed to assist consumers in making informed decisions when purchasing, contracting for, and terminating communication services. In short, the MDTC supports the implementation of FCC rules that require full disclosure in a clear and conspicuous manner of all material terms and conditions of communication service offerings throughout the marketing, purchasing, and billing process.

C. Disability Access Issues

The MDTC does not generally receive complaints regarding whether information disclosures, billing, and other pertinent information is being provided in accessible formats to

consumers with disabilities. Complaints of this nature are filed directly with the Telecommunications Relay Services (“TRS”) provider, and the MDTC submits to the FCC an annual consumer complaint log summary prepared by the TRS provider.⁴⁷ The MDTC strongly supports the FCC’s adoption of rules requiring that (1) disclosures, billing, and other information be provided to consumers with disabilities in accessible formats; and that (2) consumers with disabilities be provided with clear means to request information from providers or to resolve complaints.

V. State Enforcement of Federal Requirements

The MDTC supports a “functional approach” to regulation of the communications industry.⁴⁸ Under this functional approach, regulatory function is based upon the relative interests and abilities of the state and federal governments. With regard to consumer protection issues, the functional approach would assign the responsibility of maintaining consumer protections to the states. The MDTC fully supports this functional approach to consumer protection.

As the MDTC has previously asserted to the FCC, states have performed the consumer protection role efficiently and effectively.⁴⁹ In many cases, states are in a better position than the

⁴⁷ See, e.g., MDTC Letter to FCC, “TRS Consumer Complaint Log Summary,” WC Docket No. 03-123, filed June 29, 2009, available at http://www.fcc.gov/cgb/dro/trs_massachusetts.html (last viewed Oct. 13, 2009).

⁴⁸ NARUC proposed a “functional approach” previously and the FCC requested comments on this approach in its *In the Matter of Consumer Protection in the Broadband Era*, WC Docket No. 05-271, Report and Order and Notice of Proposed rulemaking, FCC 05-150 (rel. September 23, 2005) (“NPRM”). The Massachusetts Department of Telecommunications and Energy (“MDTE”), the predecessor agency to the MDTC, supported this approach in its Reply Comments of the MDTE to the NPRM. See *In the Matter of Consumer Protection in the Broadband Era*, WC Docket No. 05-271, Reply Comments of MDTE, at 9 (filed Mar. 1, 2006); http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518330150 (last viewed October 13, 2009). The MDTC affirms the principles presented by the MDTE in those comments. *Id.*

⁴⁹ *In the Matter of Consumer Protection in the Broadband Era*, WC Docket No. 05-271, MDTC Reply Comments, at 9-10 (filed Mar. 1, 2006).

federal government to handle individual consumer complaints (whether on an informal basis or a formal proceeding) and to address the unique market conditions in each state. As NARUC has remarked, “effective consumer protection depends largely on where the consumer is domiciled.”⁵⁰ Indeed, if consumers must seek relief beyond their state’s borders, some consumers, particularly residential consumers who lack resources, may be deterred from pursuing consumer protection complaints. Thus, empowering states to address consumer complaints is necessary to ensure all consumer protection goals are met.⁵¹ In addition, state regulators are better informed of local conditions and therefore in a better position to assist consumers in their state. States also have the ability and processes in place to conduct the sometimes difficult fact-finding necessary for customer complaints, including the forum for customers to have their complaints adjudicated, if necessary.

The federal government has recognized the importance of state involvement in the consumer protection arena in its regulatory framework for slamming and cramming complaints, where states have accepted the responsibility to enforce federal standards.⁵² States, however, should be given the authority to enforce federal consumer protection standards and requirements as the need arises. With the constantly evolving communication services market, states should be ensured the flexibility to protect consumers as circumstances change.

⁵⁰ See NARUC Legislative Task Force Report on Federalism and Telecommunications, at 3 (July 2005).

⁵¹ See *In the Matter of A National Broadband Plan for Our Future*, GN Docket No. 09-51, Joint Comments of the Massachusetts Broadband Institute and the Massachusetts Department of Telecommunications and Cable, at 19-20 (filed June 8, 2009). The MDTC affirms the principles presented in those comments. *Id.*

⁵² For example, Massachusetts is one state that has accepted responsibility for handling slamming complaints. See, e.g., FCC Information Page, “Slamming,” available at <http://www.fcc.gov/slamming/> (last viewed Oct. 9, 2009); D.T.E. Letter to FCC, WC Docket No. 94-129, (dated Nov. 3, 2000), available at http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6512058717 (last viewed Oct. 9, 2009).

While some commenters may raise concerns about the potential for different regulations for each individual state, placing the burden on the consumer to determine where to seek redress would be a greater injustice. States currently are responsible for maintaining consumer protections in a wide array of areas, and by divorcing the responsibility for maintaining consumer protections in the communication services market from the states, the potential for consumer confusion is quite likely. Accordingly, to effectively meet consumer protection goals, the responsibility to enforce consumer protection in the communication services market should rest with the states.

VI. Conclusion

Competitive market forces alone will not adequately address consumer protection and information disclosure issues identified in the NOI. For the reasons discussed above, the MDTC urges the FCC to expand the existing federal Truth-in-Billing rules for wireline and wireless voice providers to include consumer information disclosure rules and to adopt similar consumer protection and disclosure rules for providers of broadband, VoIP, subscription video (cable and satellite), and bundled services. In addition, state regulators should be given the crucial role of ensuring that consumers are adequately protected through state enforcement of consumer protection requirements, and by augmenting federal standards where appropriate to meet localized needs of consumers.

Respectfully submitted,

_____/s/_____

Geoffrey G. Why, Commissioner

October 13, 2009